

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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GERALDINE A. TRICE,

Plaintiff,

JP MORGAN CHASE BANK, et al.,

### Defendants.

Case No. 2:15-cv-01614-APG-NJK

## **ORDER GRANTING MOTIONS TO DISMISS**

(Dkt. ##13, 15)

10 Plaintiff Geraldine Trice has filed and not prevailed in two prior state court lawsuits relating  
11 to the same loan and property. This lawsuit repeats many of the same allegations and issues, but  
12 adds some new defendants, including the lawyers who represented some of the defendants in those  
13 prior lawsuits. Because most of Trice's claims and allegations were resolved by the state court, she  
14 cannot re-assert them here. The remaining allegations fail to state claims upon which relief can be  
15 granted. Therefore, I grant the pending motions to dismiss.

16 The parties are familiar with the underlying facts and tortured procedural history of this  
17 legal saga. I will not repeat them here except as necessary to explain my decision.

18 It appears that the initial dispute arose when Trice disagreed with her lender adding an  
19 escrow impound account to her loan as a result of delinquent tax payments. She also disputed how  
20 her loan account was transferred from the original lender to the current holder and servicer of the  
21 loan (defendants Chase and CRC). Trice also disagreed with how the lender disbursed the proceeds  
22 from a homeowner's insurance claim. The parties unsuccessfully participated in the State of  
23 Nevada's Foreclosure Mediation Program.

24 Trice filed her first lawsuit in state court challenging the mediation proceedings and  
25 alleging, among other things, both that Chase was not the proper beneficiary of the note and deed  
26 of trust and that Chase did not engage in good faith mediation. Nevada District Judge Delaney  
27 ultimately ruled against Trice and the Supreme Court of Nevada affirmed.

1 Trice filed a second lawsuit in state court, again challenging Chase's authority to enforce  
2 the subject loan. Nevada District Judge Escobar eventually ruled against Trice, and the Supreme  
3 Court of Nevada affirmed that decision. Trice's present lawsuit presents many of the issues  
4 previously litigated in state court. In addition, she adds claims against Kent Larsen, Katie Weber,  
5 and the law firm Smith Larsen & Wixom ("SLW"), who represented the defendants in the second  
6 lawsuit.

7 **Claims against the lawyer defendants**

8 Trice asserts a RICO claim against defendants Larsen, Weber, and SLW based solely on  
9 their "participation" in the second lawsuit as the bank's lawyers. (Dkt. #1 at 6:17-21, and 14:15-  
10 28.) Trice fails to explain how this constitutes acts forming a pattern of racketeering. Nor could  
11 she. The lawyers were representing their client in litigation filed by Trice; that can hardly be  
12 considered racketeering activity. Trice seems to base her claims on communications the lawyers  
13 had with her and the court in connection with that lawsuit. Trice is simply retaliating against the  
14 lawyers for representing their client, in violation of Nevada's anti-SLAPP statute. Nev. Rev. Stat.  
15 § 41.635 *et seq.* The lawyers are immune from civil liability for claims based upon their  
16 communications in connection with that lawsuit. *Id.* at §§ 41.637(3), 41.650. Even if the lawyer  
17 defendants are not immune from civil liability, the claim against them fails for the same reasons set  
18 forth below that this claim against the other defendants fails. Therefore, Trice's claim against  
19 defendants Larsen, Weber, and SLW must be dismissed with prejudice.

20 **Claims against the bank defendants**

21 Trice's first claim for relief against the other moving defendants (JPMorgan Chase Bank,  
22 Chase Home Finance LLC, and California Reconveyance Company) asserts fraudulent  
23 misrepresentation. (Dkt. #1 at 7-9.) Trice fails to identify any statements that were false. She bases  
24 a portion of this claim on allegations related to the letter attached as Exhibit 3 to her complaint.  
25 She also contends that the loan servicer (CRC) sent her a Notice of Default that misrepresented  
26 facts. Trice raised these same allegations in her second state court lawsuit and Judge Escobar ruled  
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1 against her.<sup>1</sup> That ruling was upheld on appeal. Thus, that claim is barred by the doctrine of issue  
 2 preclusion. *White v. City of Pasadena*, 671 F.3d 918, 926 (9th Cir. 2012) (“Issue preclusion . . .  
 3 bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court  
 4 determination essential to the prior judgment, even if the issue recurs in the context of a different  
 5 claim.”) (citation omitted); *see also LaForge v. State, Univ. and Comm. Coll. Syst. of Nev.*, 116  
 6 Nev. 415, 997 P.2d 130, 134 (2000) (“Issue preclusion may apply ‘even though the causes of action  
 7 are substantially different, if the same fact issue is presented.’”) (citation omitted).

8 Trice’s second claim for relief asserts civil rights violations under 42 U.S.C. §§ 1983, 1985,  
 9 and 1986. (Dkt. #1 at 10-11.) In order to maintain those claims, Trice must prove that the  
 10 defendants were “acting under color of state law.” *Naffé v. Frey*, 789 F.3d 1030, 1035-36 (9th. Cir.  
 11 2015). “An individual acts under color of state law when he or she exercises power ‘possessed by  
 12 virtue of state law and made possible only because the wrongdoer is clothed with the authority of  
 13 state law.’” *Id.* at 1036 (citations omitted). Trice has offered no basis to find that the moving  
 14 defendants acted under color of state law. Therefore, this claim fails as a matter of law.

15 Finally, Trice asserts a RICO claim. (Dkt. #1 at 11-17.) But the allegations she offers in  
 16 support of this claim were previously rejected by the Nevada state courts. (Dkt. #15 at 14-15 and  
 17 exhibits cited therein.) Trice cannot relitigate here the claims and allegations that were rejected by  
 18 the Nevada courts. *White*, 671 F.3d at 926; *LaForge*, 997 P.2d at 134.

19 **IT IS THEREFORE ORDERED** that the defendants’ motions to dismiss (**Dkt. ##13, 15**)  
 20 **are GRANTED.** All claims asserted against defendants Kent Larsen, Katie Weber, the law firm  
 21 Smith Larsen & Wixom, JP Morgan Chase Bank, N.A., Chase Home Finance LLC, and California  
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27 <sup>1</sup> Similarly, Judge Delaney, in the first lawsuit, rejected Trice’s argument, asserted again here,  
 28 that the Notice of Default contained misrepresentations about the purported breach giving rise to  
 the escrow impound account.

1 Reconveyance Company are hereby **DISMISSED**. There is no just reason to delay entry of  
2 judgment in favor of those defendants. Therefore, the clerk is directed to enter judgment in their  
3 favor.

4 Dated: November 18, 2015.



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6 ANDREW P. GORDON  
7 UNITED STATES DISTRICT JUDGE  
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